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SUPERIOR COURT OF STATE OF ARIZONA  
COUNTY OF YAVAPAI

STATE OF ARIZONA,  
  
Plaintiff,  
  
vs.  
JAMES ARTHUR RAY,  
  
Defendant.

CASE NO. V1300CR201080049

DIVISION PTB

HON. WARREN R. DARROW

**DEFENDANT JAMES ARTHUR RAY'S  
REPLY IN SUPPORT OF MOTION IN  
LIMINE TO EXCLUDE YOUTUBE  
VIDEOS**

**I. INTRODUCTION**

The 53 YouTube videos the State has disclosed are irrelevant to the charged crimes and must be excluded. The State's sole theory of admissibility for this montage of video clips of Mr. Ray—cherry-picked from prior years and entirely different settings, discussing topics from Mother's Day to unemployment—is that the videos can somehow prove that participants at the 2009 sweat lodge ceremony were not free to leave. This theory is unworkable.

STATE BAR COURT  
YAVAPAI COUNTY, ARIZONA

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CLERK

BY: **BOBBI JO BALL**

1 First, the 2009 participants state that they *were* free to leave, and indeed, many *did* leave  
2 throughout the ceremony. The State's attempt to manufacture relevance in the videos thus rests  
3 on its own invented counterfactual in which cowed participants were trapped inside the sweat  
4 lodge at the hands of a cult leader. There is absolutely no basis for this inflammatory tale. And  
5 without that factual predicate, there is no ground for admitting the videos.

6 Moreover, the videos are so far removed from the charged conduct that the State's theory  
7 of relevance is inconceivable. As an initial matter, the State offers no evidence that any  
8 participant saw any of the 53 videos at issue. There is plainly no legal or logical theory that  
9 permits a jury to infer how any individual participant acted on October 8, 2009 based on  
10 *unrelated statements* by Mr. Ray made in *other years* when the participant in question was *not*  
11 *present*. Nor do these videos comprise a complete and fair picture of Mr. Ray's ideas—assuming  
12 for argument's sake that his various thoughts have any place in this trial. Instead, admitting the  
13 videos will effectively permit the State to show the jury an edited documentary of Mr. Ray's life  
14 and work in the hopes that the jury will not like him. Worse, the State apparently believes it can  
15 screen this video footage through a self-proclaimed expert on “cult deprogramming”—a person  
16 who, as the Defense will argue in a separate motion, in addition to having suffered a felony  
17 conviction for conspiracy to commit grand theft, has no place in this trial. In all events, the  
18 State's collection of irrelevant video clips would distract the jury, would prejudice Mr. Ray, and  
19 would significantly—and needlessly—prolong the trial.

## 20 **II. ARGUMENT**

### 21 **A. There is no factual basis for the State's theory of admissibility.**

22 The videos must be excluded because there is *no factual basis* for the State's theory of  
23 relevance under Rule 401. Through these videos, the prosecution asserts, the State will disprove  
24 the Defense position that “all of the participants in the 2009 sweat lodge were free to leave at any  
25 time.” Response at 2. The State believes the videos will “demonstrate the techniques used by  
26 Defendant and the impact of these on the mindset of the participants in the 2009 sweat lodge  
27  
28

ceremony,” showing “why some participants remained inside the sweat lodge despite significant physical distress.” Response at 2:13–16.

There is absolutely no basis for this theory. The evidence will show that participants felt free to leave the sweat lodge at any time, were in fact free to leave, and did leave when they wanted to. Three participants in the Spiritual Warrior weekend—Elsa Hafsted, Simin Marzvan, and Soheyla Marzvan—chose not to do the sweat lodge at all. Three others entered the sweat lodge but decided to leave after the first round. *See* Transcript of Interview of Sylvia De La Paz by Det. Willingham, 10/27/09, at 12:13–14 (stating that “there were two other people that left in the first round with me: Carl and his wife Louise [Nelson]”); *id.* at 12:25 (“those of us in physical distress got the hell out of there”). Many participants came and left throughout the ceremony, including two participants who left in the middle of subsequent rounds. *See* Transcript of Interview of John Ebert by Det. Parkison, 10/8/09, at 3:20–21 (Ebert left in Round 4 and went back in for Round 7); Transcript of Interview of Dawn Gordon by Sgt. Boelts, 10/12/09, at 23:19–23 (John Ebert exited through the side flap during Round 4); Transcript of Interview of Bill Leversee by Det. Surak, 10/8/09, at 9:27 (“I left in the middle of a round.”). And the State’s own witnesses will testify consistently that they were always free to leave if they chose. *See, e.g.,* Transcript of Interview of Randall Potter by Det. Surak, 10/8/09, at 10:7–8 (“You know, if anybody wanted to leave they would have left.”); Transcript of Interview of Danita Oleson by Det. Parkison, 10/8/09, at 5:8 (“Anybody could have left at anytime.”).

Thus, the State’s attempt to introduce the videos hinges on a factual predicate that is *refuted* by the State’s own evidence. The State therefore cannot establish the necessary foundation for the videos. They are irrelevant and must be excluded.

**B. The videos have no connection to or bearing on the events of October 8, 2009 and, in all events, must be excluded under Rule 403.**

Moreover, the videos are so far removed from the charged crimes that their relevance is inconceivable as a matter of law and logic. The State apparently agrees that the 21 videos filmed *after* October 8, 2009 are irrelevant, and the State will not use them in its case-in-chief. *See* Response at 2:7–9. But the State does not even attempt to explain how any of the remaining 32

1 videos is relevant. How does Mr. Ray's March 2009 discussion of unemployment, or his May  
2 2009 clip reminding people to wish their mother a happy Mother's Day, have anything to do with  
3 how sweat lodge participants behaved on October 8, 2009? Nor does the State explain which  
4 videos are its primary concern and why; which 2009 participants viewed those videos and how  
5 the participants reacted; or how the events or topics discussed in the videos have any connection  
6 at all to the 2009 sweat lodge ceremony.

7       Instead, the only apparent common thread is that Mr. Ray speaks in each video. If these  
8 videos are relevant to prove "the mindset of participants in 2009," Response at 2:23, so is  
9 everything else Mr. Ray has ever said or done. The State's theory is essentially boundless. Even  
10 if the State could creatively identify some miniscule probative value in its desired documentary of  
11 Mr. Ray's work, that value would be so drastically outweighed by the concomitant prejudice and  
12 consumption of time as to clearly require exclusion under Arizona Rule of Evidence 403.

13       If the State seriously wishes to introduce the mountain of video footage it has disclosed, it  
14 must do so in an orderly fashion. The State should identify which videos it intends to rely on and  
15 should then meet its burden of proving each video's relevance to the charged crimes. At that  
16 point, the court can hold an evidentiary hearing to determine admissibility. The Defense would  
17 then be allowed to introduce other videos, books, other written works, email messages, and the  
18 like to rebut whatever inference the State's introduced video purports to establish—no doubt with  
19 objections from the State and precious Court time wasted. The Defense respectfully submits that  
20 such a process is not worth the Court's resources where, as here, the evidence the State seeks to  
21 use cannot seriously be considered relevant to the charged crimes.

22       **C.     The State's argument, on its own terms, depends on the admissibility of**  
23       **testimony from cult "expert" Rick Ross.**

24       Finally, it bears mention that the State's argument for introducing the videos depends on  
25 its pending attempt to introduce the testimony of alleged cult expert Rick Ross. *See* Response at  
26 2:20–21 (the videos are relevant "to demonstrate the techniques explained by [Rick] Ross"). The  
27 State apparently intends to introduce the videos through Mr. Ross's testimony, and the State  
28 makes no argument that the videos have any relevance apart from Mr. Ross's testimony.

1 The Defense first received Mr. Ross's expert report this past Friday, January 7, and has  
2 not yet had an opportunity to fully review Mr. Ross's purported opinions and qualifications or  
3 conduct an interview into his conclusions. Initial analysis, however, conveys a bleak picture.  
4 Preliminary research reveals a host of disturbing facts, including a criminal record. It appears that  
5 Mr. Ross was convicted of conspiracy to commit grand theft. He was also charged but acquitted  
6 of false imprisonment for abducting a teenager to violently "deprogram" him from his religious  
7 beliefs. Mr. Ross was subsequently sued by the victim in that case and suffered a \$4 million jury  
8 award against him. Further research may reveal additional troubling facts.

9 Furthermore, Mr. Ross's curriculum vitae lacks any indication of any formal education in  
10 psychology or any experience as a mental health professional. Instead, it focuses predominantly  
11 on Mr. Ross's many media appearances of which he reports literally hundreds. While Mr. Ross'  
12 qualifications might permit him to speak on television shows about various sensational matters,  
13 one presumes the standards in a criminal court are more stringent.

14 Given these preliminary observations, and given that Mr. Ross apparently possesses a  
15 long trail of litigation and controversy, the Defense anticipates filing motions to exclude and/or  
16 limit his testimony in due course. Because the State's theory for admitting the YouTube videos  
17 depends on Mr. Ross's testimony, the potential exclusion of Mr. Ross provides yet another reason  
18 to exclude the videos.

### 19 **III. CONCLUSION**

20 The State's apparent desire to introduce a montage of irrelevant video clips of Mr. Ray is  
21 ill-conceived. There is no factual basis for the State's theory of relevance, there is no evidence  
22 any participant ever saw any of the videos, and there is no imaginable connection between the  
23 collection of far-removed speeches and discussions and the charged crimes. Worse, the State's  
24 apparent belief that these videos can be introduced through an alleged expert in cult  
25 deprogramming, simply because the State wishes to suggest to the jury that Mr. Ray is a cult  
26 leader, threatens the basic integrity of this trial. The evidence must be excluded.

1 DATED: January <sup>10</sup>10, 2011

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8  
9 Copy of the foregoing delivered this 10<sup>th</sup> day  
of January, 2011, to:

10 Sheila Polk  
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12 by 